

**\*E-FILED - 8/3/11\***

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GILBERTO JUAREZ,	)	No. C 11-3319 RMW (PR)
	)	
Plaintiff,	)	INSTRUCTIONS TO CLERK
	)	
v.	)	
	)	
PRISON CEO,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff, in custody at Mule Creek State Prison, and proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. On June 29, 2011, the court received a copy of a completed civil rights complaint form. Although the complaint is difficult to comprehend, the crux of plaintiff's underlying complaint results from confusion based on previously filed pleadings.

On August 22, 2007, plaintiff filed a petition for writ of habeas corpus in this court. It was opened as a new action and assigned the case number C 07-4318 RMW. The petition was confusing and convoluted, but, liberally construed, it appeared that although plaintiff discussed his underlying criminal trial and its alleged errors, he was attempting to discover information through the Freedom of Information Act ("FOIA"), without success. On April 21, 2008, the court dismissed the habeas action because plaintiff was not challenging the fact or duration of his confinement, and directed plaintiff instead to file a civil complaint under FOIA, 5 U.S.C. § 552.

1 Almost seven months later, on November 13, 2008, plaintiff attempted to file a civil complaint  
2 under FOIA, however, instead of initiating a new action, plaintiff used the closed case number C  
3 07-4318 RMW on his complaint. As a result, the clerk received plaintiff's complaint and filed it  
4 with the closed file, C 07-4318 RMW. Over the course of the next year and a half, plaintiff  
5 submitted additional documents and requests to the court, inquiring as to the status of his  
6 complaint. Each time, the clerk of the court sent him a copy of the docket sheet in C 07-4318  
7 RMW in response to his requests, from July 23, 2010 through July 11, 2011.

8 In the instant action -- notwithstanding that the pleading is submitted on a civil rights  
9 complaint form -- plaintiff's complaint does not appear to be a complaint at all, much less a civil  
10 rights complaint. Rather, he appears to be inquiring into the status of his complaint that was  
11 received by the court on November 13, 2008, and filed within C 07-4318 RMW. Accordingly,  
12 the underlying complaint should not have been opened as a new action or assigned a new case  
13 number. The clerk is directed to close this case, C 11-3319 RMW (PR), and to file a copy of  
14 plaintiff's complaint and this order in plaintiff's closed file, C 07-4318 RMW (PR).

15 If plaintiff's intent is to commence a federal action challenging the fact or duration of his  
16 state conviction and sentence, he may initiate a new case by filing a federal habeas petition  
17 pursuant to 28 U.S.C. § 2254. If plaintiff's intent is to commence a federal action challenging  
18 the denial of his FOIA requests, he may initiate a new case by filing a civil complaint pursuant to  
19 5 U.S.C. § 552.

20 IT IS SO ORDERED.

21 DATED: 8/2/11

  
RONALD M. WHYTE  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

GILBERTO JUAREZ,  
Plaintiff,

Case Number: CV11-03319 RMW

**CERTIFICATE OF SERVICE**

v.

PRISON C.E.O., ET AL. et al,  
Defendant.

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 3, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Gilberto Juarez J-83144  
CTF Prison  
Mule Creek State Prison  
Post Office Box 689 - EW 136  
Soledad, CA 93960

Dated: August 3, 2011

Richard W. Wieking, Clerk  
By: Jackie Lynn Garcia, Deputy Clerk